

DOMINICA C. ANDERSON (SBN 2988)  
HOLLY S. STOBERSKI (SBN 5490)  
*CM/ECF Registration No. Pending*  
**DUANE MORRIS LLP**  
100 North City Parkway, Suite 1560  
Las Vegas, NV 89106-4617  
Telephone: (702) 868-2600  
Facsimile: (702) 385-6862  
E-Mail: dcanderson@duanemorris.com  
hstoberski@duanemorris.com

NEIL W. BASON (CA SBN 167662)  
*Pro Hac Vice Pending*  
**DUANE MORRIS LLP**  
One Market Plaza  
Spear Street Tower, Suite 2200  
San Francisco, CA 94105-1127  
Telephone: 415.957.3000  
Facsimile: 415.957.3001  
E-Mail: nwbason@duanemorris.com

Attorneys for Secured Creditor,  
WBCMT 2006-C27 PLUMAS STREET, LLC

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA – RENO DIVISION**

In re

TEE INVESTMENT COMPANY, Limited  
Partnership, dba LAKERIDGE  
APARTMENTS,

Debtor.

Case No. 3:11-BK-50615-BTB

Chapter 11

**OBJECTION OF SECURED CREDITOR  
WBCMT 2006-C27 PLUMAS STREET, LLC  
TO DEBTOR'S DISCLOSURE STATEMENT**

Date: July 21, 2011  
Time: 2:00 p.m.  
Place: C. Clifton Young Federal Bldg.  
300 Booth Street  
Courtroom 2, 5<sup>th</sup> Floor  
Reno, NV 89509

Secured Creditor WBCMT 2006-C27 Plumas Street, LLC ("Secured Creditor") objects as follows to the Disclosure Statement (Docket No. 44) (the "Disclosure Statement") filed by debtor Tee Investment Company ("Debtor") in connection with its Debtor's Plan of Reorganization (Docket No. 43) (the "Plan").

1 **I. INTRODUCTION.**

2 No creditor could make an informed vote based on the omissions and misinformation  
3 provided in the Disclosure Statement. At best the Plan proposes a dividend to general unsecured  
4 creditors of less than 1.75%, but in fact any dividend would be much smaller under the Plan, because  
5 the Disclosure Statement grossly understates Secured Creditor's likely deficiency claim. Moreover,  
6 the dividend actually should be much greater, because at least one insider of Debtor is jointly and  
7 severally liable as a general partner, and other insiders have substantial exposure for other reasons.  
8 The liquidation analysis in the Disclosure Statement fails even to mention these things, let alone  
9 offer excuses for Debtor's favorable treatment of insiders. Debtor's omissions are particularly  
10 inexplicable because many of the same issues were raised in connection with Secured Creditor's  
11 successful motion to maintain the pre-petition receiver as custodian of Debtor's property (the  
12 "Receiver") and excuse the Receiver from turnover (Docket No. 14) (the "Motion To Excuse  
13 Turnover By Receiver").

14 **II. FACTUAL BACKGROUND.**

15 Secured Creditor has a duly perfected and enforceable first priority lien against substantially  
16 all of Debtor's property, including the real property and improvements commonly known as  
17 Lakeridge Apartments West, 6155 Plumas Street, Reno, Nevada (the "Property"). That lien secures  
18 the indebtedness under two promissory notes and the associated loan documents, in the original  
19 principal amounts of \$11,950,00.00 and \$800,000.00 (collectively, the "Loan"). As reflected in  
20 Secured Creditor's filed proof of claim (Claim No. 5-1) the total amount due under the Loan is  
21 approximately \$14,242,985.81. Secured Creditor believes that the fair market value of the Property  
22 is approximately \$12 million, resulting in an estimated deficiency claim of over \$2 million.<sup>1</sup>

23 Among the collateral assigned to Secured Creditor is a Use Agreement ("Use Agreement")  
24 between Debtor and Lakeridge Tennis Club, Inc. (the "Tennis Club") dated June 30, 2006, pursuant  
25 to which tenants of the Debtor may use the Tennis Club's facilities in exchange for the Debtor  
26 paying the Tennis Club \$100 per month. As set forth in the Motion To Excuse The Receiver From

27 <sup>1</sup> Secured Creditor reserves all rights regarding valuation, and any dollar amounts stated herein are only Secured  
28 Creditor's initial estimate, which may be revised based on appraisals, changed circumstances or other factors, or  
valuations by the Court.

1 Turnover, Secured Creditor is informed and believes that Mr. Topol and/or relatives of Mr. Topol  
 2 have an interest in the Tennis Club. In particular, on page 5 of the Use Agreement, Mr. Topol signs  
 3 the Use Agreement in his capacity as general partner of the Debtor, while a "Tamari Topol" signs  
 4 the Use Agreement as president of the Tennis Club.

5 On February 9, 2011, Secured Creditor caused a Notice of Trustee's Sale to be recorded,  
 6 which set a non-judicial foreclosure sale of the Property for March 7, 2011 at 11:00 a.m. Debtor  
 7 filed its voluntary chapter 11 petition on the eve of foreclosure, on March 1, 2011 (the "Petition  
 8 Date").

9 On March 10, 2011, Secured Creditor filed its Motion To Excuse Turnover By Receiver.  
 10 That motion points out, among other things, the following ways in which Debtor is acting solely for  
 11 the benefit of insiders and contrary to the best interests of creditors:

12 20. The Debtor's Schedule F lists an undisputed claim by the Tennis Club  
 13 in the amount of **\$1,603,701.00**, based upon "usage fees for tennis and athletic club  
 14 facility." How can the Tennis Club have a claim in this amount when the Use  
 Agreement provides that access is based upon the Debtor paying \$100.00 per month?  
 What are the interests of Mr. Topol and his family members in the Tennis Club?

15 21. Schedule G omits the Use Agreement. Why is the Use Agreement,  
 16 which indisputably enhances cash generating potential of the Property, not listed?  
 17 Because it contains terms and conditions that are now deemed disadvantageous to Mr.  
 Topol and/or his family members?

18 22. Item 23 of the Debtor's Statement of Financial Affairs (Withdrawals  
 19 from a partnership or distributions by a corporation) lists withdrawals by Mr. Topol in  
 20 an "unknown amount" between March 2010 and March 2011. However, Schedule F  
 21 lists undisputed claims by Mr. Topol in the amount of \$1,090,235.79, for "entitlement  
 expenses for tentative map and special use permits," and \$299,356.90 for  
 "contributions." How is it that Mr. Topol knows the amount the Debtor allegedly  
 owes to him, yet has no idea how much of the Debtor's funds (which constituted  
 Secured Creditor's cash collateral) he withdrew?

22 23. Item 21 of the Debtor's Statement of Financial Affairs (Current  
 23 Partners, Officers, Directors and Shareholders) lists Mr. Topol but neglects to list the  
 24 nature of his interest in the Debtor or the percentage interest. [Motion To Excuse  
 Receiver From Turnover (Docket No. 14) (emphasis in original)]

25 On April 7, 2011, Secured Creditor filed its Reply (Docket No. 28) in support of the Motion  
 26 To Excuse Receiver From Turnover. That Reply points out that, in addition to the foregoing:

27 Debtor is still favoring insiders at the expense of creditors:

28 \* \* \*

- 1 a) The Debtor's general partner was Nathan Topol, but the Debtor  
2 has just revealed in its "Corporate" Resolution (Docket No. 9) that  
3 it has purported to replace Nathan Topol with a trust, in violation  
4 of the Loan Documents and in an apparent attempt to shield  
5 Nathan Topol from personal liability. *Compare* Bason Decl.  
6 Exs. 1 & 2 (promissory notes executed by Nathan Topol as general  
7 partner) *with* Ex. 3 ("Corporate Resolution" listing the Nathan &  
8 Virginia Topol Trust of April 1, 1985 as the general partner). The  
9 Debtor's Statement of Financial Affairs ("SOFA") says nothing  
10 about this apparent fraud on creditors. *See* Bason Decl. Ex. 4  
11 (SOFA).
- 12 b) At the meeting of creditors, both the Debtor's representative,  
13 Byron Topol, and the Debtor's attorney acknowledged that  
14 (I) various transactions with affiliates were omitted from the  
15 Debtor's bankruptcy schedules and SOFA, and (II) they have not  
16 conducted a thorough analysis of possible fraudulent or  
17 preferential transfers. *See* Penwarden Decl. ¶¶ 7-8. There are no  
18 notations on the Debtor's bankruptcy schedules or SOFA to alert  
19 creditors to this missing information (*see* Bason Decl. Ex. 4), and it  
20 is impossible to know what else might be undisclosed that did not  
21 happen to arise at the meeting of creditors.

### 22 **III. DISCUSSION.**

23 A disclosure statement must contain "adequate information," meaning information in  
24 sufficient detail that enables a creditor or interest holder belonging to a particular class to make an  
25 informed judgment whether to accept or reject the plan. 11 U.S.C. § 1125(a)(1). *In re Diversified*  
26 *Investors Fund XVII*, 91 B.R. 559, 561 (Bankr. C.D. Cal. 1998). Among other things, a disclosure  
27 statement typically should: (a) describe assets and their value, (b) describe the debtor's pre- and  
28 postpetition financial condition, (c) provide financial information, data, valuations, and/or  
projections relevant to voting and feasibility, (d) explain risks under the plan, and (e) explain the  
relationship of the debtor with affiliates. *In re Metrocraft Publishing Services, Inc.*, 39 B.R. 567,  
568 (Bankr. N.D. Ga. 1984). Debtor's Disclosure statement is not remotely close to meeting these  
standards.

Nathan Topol, and Other Insiders. As set forth in the factual background above, Debtor's  
principal, Nathan, was Debtor's general partner at the time when many of its outstanding debts were  
incurred, including Debtor's obligations to Secured Creditor. Therefore, as Debtor's counsel did not  
dispute at the hearing on the Motion To Excuse Receiver From Turnover, Nathan Topol is  
personally liable for those obligations. Yet Debtor's liquidation analysis fails to estimate the

1 recovery that could be obtained from Nathan on account of his general partner liability, which is  
 2 critical under the “best interests of creditors test.” *See* 11 U.S.C. § 1129(a)(7)). The rest of the  
 3 Disclosure Statement also fails to reveal anything about this issue. *Compare* Disclosure Statement at  
 4 4:20-23 (stating only that Debtor’s *current* general partner is a family trust, and that Nathan and  
 5 Virginia Topol are limited partners).

6 Debtor likewise has claims against Nathan Topol, and any other insiders who received funds  
 7 or property while Debtor was insolvent. There are well-established grounds for recovery of  
 8 dividends made from an insolvent entity, or preferential payments of alleged debts of insiders, or  
 9 transfers to insiders disguised as debt repayment that in fact were distributions on account of their  
 10 equity interests. The Disclosure Statement fails even to acknowledge that the transfers occurred,  
 11 either in its liquidation analysis or elsewhere.

12 In addition, because Debtor’s claims against Nathan Topol far exceed his claims against  
 13 Debtor, he should not receive any distributions at all. Instead the Plan proposes to pay him the lion’s  
 14 share of any distribution to general unsecured creditors, on account of alleged “loans” (doubtless  
 15 more properly characterized as equity contributions) of over \$1.3 million. Again, the Disclosure  
 16 Statement fails to address any of this. *See* Disclosure Statement at 9:7-9 (listing Nathan’s “loans”  
 17 without comment).

18 The Use Agreement. As noted above, Secured Creditor pointed out in the Motion To Excuse  
 19 Turnover By Receiver that Debtor’s Schedule G omits the valuable Use Agreement between Debtor  
 20 and its affiliate, the Tennis Club. At that time Debtor responded, in a declaration of Byron Topol  
 21 (Docket No. 20, ¶ 12), that such omission “was not intentional.” But the Disclosure Statement once  
 22 again fails to list the Use Agreement as an executory contract (*see* Disclosure Statement at 9:18-25),  
 23 or state whether Debtor intends to assume or reject it, or provide any other information regarding the  
 24 current state of the Use Agreement, any relevant history, any claims between Debtor and the Tennis  
 25 Club, and what Debtor intends to do in future regarding use of the Tennis Club.

26 The Four Trucks. Secured Creditor previously pointed out, in its Motion To Excuse Receiver  
 27 From Turnover, that Debtor cannot obtain a vote of general unsecured creditors in favor of any plan  
 28 of reorganization because of Secured Creditor’s large deficiency claim, and therefore Debtor cannot

1 obtain a consenting impaired class (11 U.S.C. § 1129(a)(10) & (b)) and is ineligible for cramdown.  
 2 *See* Motion To Excuse Receiver From Turnover (Docket No. 14) at 7:1-8. At the time of the hearing  
 3 on that motion, Debtor had no argument to the contrary. But now Debtor's Plan attempts artificially  
 4 to impair four secured truck loans, in the hope of obtaining a consenting impaired class. Specifically,  
 5 Debtor proposes to pay each of the truck loans in two years at an interest rate of 6% per annum. *See*  
 6 Plan at 6:26-9:2 (Classes 2-5).

7 First, the Disclosure Statement fails to reveal anything about each of these loans: their  
 8 current interest rates, the remaining term of each loan, and so on. Second, Debtor fails to explain  
 9 why it is in the best interest of creditors to bear the expense of any trucks for a 126-unit apartment  
 10 complex, let alone four of them. No doubt in reality these four trucks are for the personal use of the  
 11 Topols and their friends and retaining them is of no benefit to Debtor, as evidenced by the fact that  
 12 Debtor did not turn over any of the trucks to the Receiver and on information and belief the Receiver  
 13 has been operating the Property for many months without the need for any trucks.

14 The Disclosure Statement Contains Numerous Other Errors. In addition to the foregoing  
 15 errors, the Disclosure Statement has numerous other errors, including the following. It continues to  
 16 refer to "ARCS," Secured Creditor's predecessor in interest, notwithstanding that Secured Creditor's  
 17 filed proof of claim, to which no objection has been filed, establishes that it is the successor in  
 18 interest and holder of the loan debt. It estimates Secured Creditor's deficiency claim at less than \$1  
 19 million when as noted above the actual dollar amount appears to be in excess of \$2 million. *See*  
 20 Disclosure Statement at 8:5. It inappropriately makes statements that purport to summarize the law  
 21 in ways that are inaccurate or argumentative, none of which has any place in a disclosure statement.  
 22 *See, e.g.,* Disclosure Statement at 3:4-22 (summary of cramdown that among other things omits need  
 23 for consenting impaired class). It contains meaningless text that is apparently a holdover from some  
 24 amended plan in another case. *See, e.g., id.* at 16:17-21 (referring to executory contract with Best  
 25 Western).

26 Confirmation issues. In addition to the foregoing, it would be inefficient to proceed with  
 27 approval of any disclosure statement or balloting when Debtor's Plan is unconfirmable because of  
 28 Debtor's inability to obtain a consenting impaired class, both due to its artificial impairment of the

1 four truck claims and due to Secured Creditor's ability to control the class of general unsecured  
2 creditors (as further described in the Motion To Excuse Receiver From Turnover). In addition, the  
3 dollar amount of "new value" that Debtor proposes to use is inadequate, and Debtor fails to provide  
4 an opportunity for bidding or other market-testing of the amount of such new value. Secured  
5 Creditor reserves all of its rights to object to confirmation of the Plan on these or any other grounds.

6 **IV. CONCLUSION.**

7 For all of the foregoing reasons, Debtor's Disclosure Statement should not be approved.

8 Respectfully submitted,

9 DATED: July 7, 2011

10 DUANE MORRIS LLP

11  
12 By: /s/ Neil W. Bason (CA SBN 167662)

13 Attorneys for Secured Creditor WBCMT 2006-C27  
14 PLUMAS STREET, LLC  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

1. On July 7, 2011, I served the following documents:

a. **OBJECTION OF SECURED CREDITOR WBCMT 2006-C27 PLUMAS STREET, LLC TO DEBTOR'S DISCLOSURE STATEMENT**

2. I served the above-named document by the following means to the persons listed below:

a. By electronic transmission through the CM/ECF filing system of the US Bankruptcy Court, District of Nevada, to the parties listed below:

Alan R. Smith  
505 Ridge Street  
Reno, NV 89501

U.S. Trustee-RN-11  
300 Booth Street, Suite 3009  
Reno, NV 89509

*Debtor's Counsel*

*Trustee*

Brian R. Irvine  
Jones Vargas  
100 W. Liberty St., 12<sup>th</sup> Floor  
P.O. Box 281  
Reno, NV 89504

*Attorneys for Creditor Jones Vargas*

b. By U.S. Mail to the parties listed below:

Tee Investment Company, Limited Partnership  
dba Lakeridge Apartments  
6100 Plumas Street  
Reno, NV 89519

*Debtor*

3. I declare under penalty of perjury that the foregoing is true and correct.

SIGNED: July 7, 2011

Aristela Wise  
(Name of Declarant)

/s/ Aristela Wise (xxx-xx-2624)  
(Signature of Declarant)